

Report of the

NORTH DAKOTA LEGISLATIVE COUNCIL

Submitted to the
North Dakota Secretary of State
Under North Dakota Century Code Section 16.1-01-17
Tuesday, October 3, 2006

BACKGROUND

In 2004 the electorate of this state approved a constitutional amendment to Article III, Section 2, of the Constitution of North Dakota which authorized the Legislative Assembly to provide by law for a procedure through which the Legislative Council may establish an appropriate method for determining the fiscal impact of an initiative measure and for making the information regarding the fiscal impact of the measure available to the public.

In 2005 the Legislative Assembly enacted North Dakota Century Code (NDCC) Section 16.1-01-17, which requires the Legislative Council to hold hearings, receive public testimony, and gather information from agencies, institutions, or departments on the estimated fiscal impact of an initiated measure. At least 30 days before the public vote on the measure, the Legislative Council is to submit a statement of the estimated fiscal impact of the measure to the Secretary of State. Within 30 days of the close of the first complete fiscal year after the effective date of an initiated measure approved by the voters, the agencies, institutions, or departments that provided the estimates of the fiscal impact of the measure to the Legislative Council are to submit a report to the Legislative Council on the actual fiscal impact for the first complete fiscal year resulting from the provisions of the initiated measure and a comparison to the estimates provided to the Legislative Council, and the Legislative Council is to issue a report of the actual fiscal impact of the initiated measure.

Two initiative measures qualify for the ballot for the general election on Tuesday, November 7, 2006—an initiated constitutional measure relating to the taking of private property and an initiated statutory measure relating to child custody and support.

The Legislative Council followed the procedure required by statute, which is similar to the procedure for obtaining fiscal impact information which the Legislative Assembly follows during legislative sessions—those state agencies determined to have either the best information on the impact of a measure or the primary responsibility for compiling and maintaining the information that is needed were invited to prepare fiscal notes and present their findings at a meeting held by the Legislative Council on Monday, September 11, 2006.

**INITIATED MEASURE REGARDING
TAKING OF PRIVATE PROPERTY**

This initiated measure amends Article I, Section 16, of the Constitution of North Dakota which relates to the taking of private property for public use. This language is added to the section:

For purposes of this section, a public use or a public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health. Private property shall not be taken for the use of, or ownership by, any private individual or entity, unless that property is necessary for conducting a common carrier or utility business.

The Department of Transportation presented information on the estimated fiscal impact of this measure. A copy of the fiscal note requested of the department is attached as Appendix A.

The Department of Commerce presented information on the estimated fiscal impact of this measure. A copy of the fiscal note requested of the department is attached as Appendix B.

**Statement of Estimated
Fiscal Impact of the Measure**

The fiscal note prepared by the Department of Transportation states the department pays just compensation for property and the department may incur administrative costs if a project is challenged as being exclusively for economic development but there is no way to determine what those costs may be before they are incurred.

The fiscal note prepared by the Department of Commerce states it is not possible to estimate the fiscal effect of the initiated measure because it is unknown how many potential economic development projects could be affected, but the department does have a fair degree of certainty that the state fiscal impact with respect to expenditures and appropriations is zero.

**INITIATED MEASURE ON
PARENTING PLANS AND CHILD
CUSTODY AND SUPPORT**

This initiated measure enacts NDCC Section 14-09-06.7 to provide that parents retain joint legal and physical custody of their children unless a parent

has been denied custody by being declared unfit by clear and convincing evidence, to require parents to develop a joint parenting plan, to require the court to facilitate production of a parenting plan if the parents cannot agree, to provide that parents who previously have not had a fitness hearing may petition the court for a fitness hearing at any time, and to provide that child support payments may not be greater than the actual cost of providing for the basic needs of the child.

The Supreme Court presented information on the estimated fiscal impact of this measure. A copy of the fiscal note requested of the Supreme Court is attached as Appendix C.

The Department of Human Services presented information on the estimated fiscal impact of this measure. A copy of the fiscal note requested of the department is attached as Appendix D.

Statement of Estimated Fiscal Impact of the Measure

The fiscal note prepared by the Supreme Court states (1) the passage of the initiated measure could have a significant impact on the judiciary; (2) at this time, the court is unable to measure that impact and any estimate by the court would be purely speculative; and (3) the court has limited the actual amount of the fiscal note to the known costs of additional 1 to 8 judges, 1 to 8 clerks, 1 to 8 reporters, 11 mediators and 22 support staff, education and training, and inflation and miscellaneous increases. The fiscal note states a fiscal effect of \$2,057,000 in expenditures for the 2007-09 biennium to recruit and train 11 mediators and 22 support staff and because of uncertainties as

to the impact on judicial workload, a range of \$2,497,000 to \$5,741,000 for the 2009-11 biennium and a range of \$2,622,000 to \$6,028,000 for the 2011-13 biennium.

The fiscal note prepared by the Department of Human Services states (1) based on the language of the measure, the state's compliance with federal regulations could be compromised; (2) the fiscal note reflects the amount of federal funding that is at risk; and (3) ultimately, whether the state loses the federal funding is a federal determination. The fiscal note states a fiscal effect of a reduction in federal funds of \$71,106,009 for the 2007-09 biennium, which consists of \$18,306,391 for the child support enforcement (CSE) program and \$52,799,618 for the temporary assistance for needy families (TANF) program; a reduction in federal funds of \$71,938,036 for the 2009-11 biennium, which consists of \$19,138,418 for the CSE program and \$52,799,618 for the TANF program; and a reduction of \$73,103,567 for the 2011-13 biennium, which consists of \$20,303,949 for the CSE program and \$52,799,618 for the TANF program. The fiscal note also states that although undeterminable, there would be an impact on counties due to increased staffing needs at the regional child support enforcement units and county social services offices due to additional staff time needed on future cases, home studies related to fitness hearings, and reprocessing existing cases as they are redone to include parenting plans.

ATTACH:4

FISCAL NOTE

Requested by Legislative Council

Initiated Measure – Taking of private property for public use

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The department purchases property following state and federal laws which require us to pay just compensation (i.e. appraised value) for the property. As we build transportation projects it may be possible that someone may challenge the project as being exclusively for economic development in which case there may be some administrative costs. We have no way to determine what those costs may be before they are incurred.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Grant Levi	Agency:	NDDOT
Phone Number:	328-2584	Date Prepared:	9/11/2006

FISCAL NOTE

Requested by Legislative Council

Initiated Measure – Taking of private property for public use

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This initiated measure limits the ability of state government or political subdivisions to take private property for economic development purposes.

It is not possible to estimate the fiscal effect of this initiated measure because it is unknown how many potential economic development projects could be affected. We do have a fair degree of certainty that the state fiscal impact with respect to expenditures and appropriations is zero.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name: Shane Goettle	Agency: Department of Commerce
Phone Number: 328-7284	Date Prepared: 9/8/2006

FISCAL NOTE

Requested by Legislative Council

Initiated Measure - Child custody and support

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-09 Biennium		2009-11 Biennium		2011-13 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures	\$2,057,000		\$2,497,000 - \$5,741,000		\$2,622,000- \$6,028,000	
Appropriations	\$2,057,000		\$2,497,000 - \$5,741,000		\$2,622,000- \$6,028,000	

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2007-09 Biennium			2009-11 Biennium			2011-13 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis. Attach additional sheets as necessary.*

The passage of this initiated measure could have a significant impact on the judiciary, however, at this time, we are unable to measure that impact. Any estimate by us would be purely speculative. For that reason, we have limited the actual amount of the fiscal note to the known costs of additional judge units and deputy clerks, and an estimated cost for mediator units.

The above number for the 2007-09 biennium includes the cost of 11 mediators and support staff, as well as money for education and training. The estimated ranges above for 2009-11 includes these costs plus the costs for 1-8 judges, 1-10 clerks, and 1-8 reporters. The estimated ranges for 2011-13 were arrived at by increasing the 2009-11 numbers by 5% to account for inflation and miscellaneous increases. As explained below the increase in the number of judges would not necessarily be due solely to the passage of this measure.

Court-facilitated mediation is a requirement of the initiative. There is no provision to pass that cost on to the parties, regardless of their ability to pay. We do not believe it would be appropriate for judges to assume the role of mediator as well as adjudicator.

We propose a minimum of 11 mediator units (mediator, plus 1 support staff per every 2 mediators) will be required to meet the initial demand for services. One mediator would be assigned to each of the 7 judicial districts, with an additional mediator in Williston, Bismarck, Grand Forks, and Fargo. An estimated cost of the 11 mediators plus administrative staff is approximately \$2,027,000.

Because it is a new concept, we would require funds for recruitment and training, initially anticipated as a minimum of 40-hours of specialized training, with on-going continuing education. An estimated cost of education and training is \$30,000.

We are supportive of court-sponsored mediation. We have high hopes that properly trained mediators will be able to resolve highly emotional issues before they reach the adversarial process of a court trial.

We believe that upfront mediation that focuses on the long-term, personal aspects of a divorce will result in a more amicable separation that maintains the benefit of the children as the fulcrum of the relationship. The Alternative Dispute Resolution Committee and the court have been working on this concept. At least initially, there may be a tendency to reject or appeal from the mediator's solution in order to obtain a second chance to argue the case before a judge, with the goal of winning a more favorable outcome.

The addition of court-sponsored mediator units will have an impact on the counties, as they are required to provide adequate facilities for the court.

Under the proposed measure, if parties are unable to reach agreement, the court must make a finding on fitness to parent. In addition, in order to establish child support, the court must make a finding on the basic needs of the child or children. This will necessitate additional hearings, but we are unable to project with any accuracy the number of hearings or the amount of time needed for each hearing.

We do know that currently an estimated 85% of North Dakotans reach agreement in divorce and custody cases without requiring a trial. To some degree, this is because they know upfront what the child support will be. As proposed, the initiative leaves this important issue open to argument. We can be sure that a certain percentage of people will continue to settle their differences in a manner that is both fair to the adults in the relationship while still protecting the welfare of the children involved. We can be equally sure that in a certain percentage of cases, that will not occur.

We believe there will be some confusion as to joint parenting and how parenting time issues are resolved. The provision of equal time between parents may result in poorly designed schedules for children and increased need for court intervention when disputes arise because the parents cannot reach an agreement or having reached an agreement subsequently disagree on its terms or operation.

Currently cases can be re-opened at any time if the parties can show a substantial change in circumstances or danger to the child. The initiated measure removes these basic thresholds and, instead, grants a hearing by right. It is unknown how many litigants will seek a hearing on change of custody as a matter of right if the initiated measure passes.

We anticipate that there may be a substantial increase in the number of child support hearings that are required, but again, have no reliable way to predict the number. It follows there could also be a substantial number of appeals of child support and custody issues, again without any reliable way to predict an actual number.

The subjective "actual cost of the basic needs of the child" standard that is being proposed as the basis for determining child support is apparently subject to a case-by-case determination. There has been a suggestion that the legislature can define this, however, this is an initiated measure, not a proposed constitutional amendment. If approved, the provisions of the initiated measure could not be appealed or amended for seven years after its enactment date, except by a two-thirds vote of the members of both houses. Rather than a legislative definition, it is more likely that the standard will be developed through case law. Case law develops slowly, on a case-by-case basis, in which the Supreme Court is only able to address those issues that are directly before the court in a given case. It may be years before any consistency in establishing child support can emerge.

At the current time, our weighted caseload studies show a statewide judge shortage of five judges. We are not now prepared to ask for those judgeships because we are only beginning to be able to discern the trends in locations where additional judges are necessary. At this point, it would be premature to add additional judges because we do not have a sense of how many more hearings under the initiated

measure will be required or the average length of the hearings. The biennial cost of a judge at current salary levels is approximately \$263,000. The estimated biennial cost for a court reporter for a judge is \$94,000.

Our current weighted staffing studies show a deputy clerk shortage of 7 clerks statewide. We have not requested any additional deputy clerk staff this biennium because it is our hope that we can alleviate at least some of the shortage by sharing staff between counties. We know that additional deputy clerk time will be required to process the paperwork for the increased number of motions and hearings. The biennial cost of a deputy clerk is approximately \$83,000.

If the initiated measure passes, we may need to request additional judge units and deputy clerks in the 2009-2011 biennium. How many and where they will be located will depend upon the actual impact of the initiated measure. In the event that the initiated measure does pass, we will attempt to absorb the need for additional judges and clerks as best as possible, with the understanding that there may be considerable delay in obtaining hearing dates, rendering of decisions, and the processing of paperwork. Changes in family law cannot override the need to continue to provide adequate services in criminal law, juvenile law, probate law, and civil law.

Additional judge units and deputy clerks will have an impact on the counties, as they are required to provide adequate facilities for judges and court reporters.

We currently receive \$1 million in federal IV-D monies that flow through the State Disbursement Unit to offset the costs of providing court services for child support hearings. We are informed the initiated measure could result in a loss of federal funds for the state disbursement unit. If that occurs, these funds would no longer be available to the courts, and the cost of providing current clerk services, plus additional services required because of increased demand for court hearings, would need to be funded through general revenue. However that is not reflected in this fiscal note because we are informed that this potential loss is included in the DHS fiscal note.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The Supreme Court receives approximately \$1,000,000 in federal IV-D monies through DHS that would no longer be available if this initiative results in a loss of federal funds. We are informed this potential loss of revenue is reported on the fiscal note prepared by DHS, since they receive the money and pass it through to the courts.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

A range of potential expenditures includes salaries and benefits for 1 to 8 judges, 1 to 10 additional clerks, 1 to 8 court reporters, and 11 mediators and 5 staff. Training and education is also included.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name: Sally Holewa	Agency: Supreme Court
Phone Number: 328-4216	Date Prepared: 9/6/06

FISCAL NOTE
Requested by Legislative Council

Initiated Measure - Child custody and support

1A. State fiscal effect: Identify the state fiscal effect and the fiscal effect on agency appropriation compared to funding levels and appropriations anticipated under current law.

	2007-09 Biennium		2009-11 Biennium		2011-13 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues		(71,106,009)		(71,938,036)		(73,103,567)
Expenditures	71,106,009	(71,106,009)	71,938,036	(71,938,036)	73,103,567	(73,103,567)
Appropriations	71,106,009	(71,106,009)	71,938,036	(71,938,036)	73,103,567	(73,103,567)

1B. County, City, and school district fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

2007-09 Biennium			2009-11 Biennium			2011-13 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
Unable to determine at this time	n/a	n/a	Unable to determine at this time	n/a	n/a	Unable to determine at this time	n/a	n/a

2. Narrative: Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis. Attach additional sheets as necessary.

Fiscal note instructions require the Department to prepare the fiscal note based on the language in the measure itself. The instructions do not allow the Department to take into account possible future legislation that may be required to ensure compliance with federal regulations. Based on the language of the measure, the State's compliance with federal regulations could be compromised. The fiscal note reflects the amount of federal funding that is at risk. Ultimately whether or not the state loses the federal funding is a federal determination.

Although undeterminable, there would be an impact on counties due to increased staffing needs at the Regional Child Support Enforcement Units (RCSEUs) and the county social services offices. The increased staffing needs would be due to additional staff time needed on future cases, home studies related to fitness hearings, and reprocessing existing cases as they are re-done to include parenting plans.

3. State fiscal effect detail: For information shown under fiscal effect in 1A, please:

A. Revenues: Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

The decreased other funds revenues reflect the loss of federal funding for the Child Support Enforcement program, the loss of federal TANF moneys, and the loss of SWAP revenues related to the amounts drawn down from the federal government for county child support enforcement expenditures.

B. Expenditures: Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

The increase in general fund expenditures and the corresponding decrease in other fund expenditures is due to the replacement of federal and other funds with general fund moneys.

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

The increase in general fund appropriations and the corresponding decrease in other fund appropriations is due to the replacement of federal and other funds with general fund moneys.

Name: Brenda M. Weisz	Agency: Department of Human Services
Phone Number: 328-2397	Date Prepared: September 8, 2006

**Projected Potential Loss of Federal Moneys
For Being Out of Compliance With
Federal Child Support Enforcement Regulations**

Funding	2007-09 Biennium	2009-11 Biennium	2011-13 Biennium
Child Support Enforcement Funds			
Matched by state expenditures	9,664,475	10,103,726	10,719,044
Matched by county expenditures (SWAP Funds)	6,641,916	6,943,792	7,366,669
Child Support Incentives			
State	575,000	601,134	637,743
Counties	1,425,000	1,489,766	1,580,493
Total CSE Federal Funds	<u>18,306,391</u>	<u>19,138,418</u>	<u>20,303,949</u>
 TANF	 52,799,618	 52,799,618	 52,799,618
 Total	 <u><u>71,106,009</u></u>	 <u><u>71,938,036</u></u>	 <u><u>73,103,567</u></u>